



IB 06-137  
DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

**Julie A. Reese**  
Deputy Director General  
& General Counsel

Telephone: +1-202-243-5096  
Email: [jreese@itso.int](mailto:jreese@itso.int)

10 July 2006

Marlene H. Dortch, Secretary  
U.S. Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL  
**RECEIVED**

JUL 10 2006

Federal Communications Commission  
Office of Secretary

**RECEIVED**

JUL 14 2006

**Policy Division  
International Bureau**

Re: Section 316 Petition of the  
International Telecommunications Satellite Organization (ITSO)  
IB Docket No. 06-\_\_\_\_

Dear Ms. Dortch:

Please accept for filing the attached Petition of the International Telecommunications Satellite Organization (ITSO) under Section 316 of the Act to modify certain space station authorizations held by Intelsat, LLC. This filing responds to the Commission's invitation to file such a Petition, contained in its June 19, 2006 order in IB Docket 05-290 (FCC 06-85, at paragraph 65).

Please contact the undersigned with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Reese".

cc (w/ attachments): Chairman Kevin J. Martin  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Deborah Taylor Tate  
John Giusti, Acting Bureau Chief, International Bureau  
Jim Ball, Chief, Policy Division, International Bureau

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

**RECEIVED**

JUL 10 2006

Federal Communications Commission  
Office of Secretary

**RECEIVED**

JUL 14 2006

Policy Division  
International Bureau

In re:

IB Docket No. 06-\_\_

Modification of Intelsat, LLC Space Station  
Authorizations Pursuant to Communications  
Act Section 316

**PETITION OF THE INTERNATIONAL TELECOMMUNICATIONS  
SATELLITE ORGANIZATION (ITSO)**

**July 10, 2006**

## TABLE OF CONTENTS

<u>I.</u>	<u>SUMMARY</u> .....	1
<u>II.</u>	<u>ITSO AGREEMENT ESTABLISHES A U.S. TREATY OBLIGATION TO ENSURE INTELSAT’S COMPLIANCE WITH “CORE PRINCIPLES”</u> .....	3
<u>III.</u>	<u>COMMISSION IS BOUND BY U.S. RESPONSIBILITIES AS A NOTIFYING ADMINISTRATION.</u> .....	9
<u>IV.</u>	<u>INSOLVENCY RISK ASSOCIATED WITH POST-MERGER INTELSAT IS REAL AND NOT “SPECULATIVE”</u> .....	10
<u>V.</u>	<u>COMMISSION SHOULD USE ITS SECTION 316 AUTHORITY TO ADOPT APPROPRIATE LICENSE MODIFICATIONS AS A CONDITION OF INTELSAT’S USE OF PARTIES’ COMMON HERITAGE ORBITAL LOCATIONS.</u> .....	15
<u>VI.</u>	<u>CONCLUSION</u> .....	19
	<u>EXHIBIT I</u> .....	A-1

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re:

IB Docket No. 06-\_\_

Modification of Intelsat, LLC Space Station  
Authorizations Pursuant to Communications  
Act Section 316

**PETITION OF THE INTERNATIONAL TELECOMMUNICATIONS  
SATELLITE ORGANIZATION (ITSO)**

**I. SUMMARY**

Pursuant to the invitation extended in the Commission's *Intelsat-PanAmSat Transfer of Control Order*,<sup>1</sup> (hereafter "*PanAmSat Transfer Order*") the International Satellite Telecommunications Organization ("ITSO") hereby respectfully petitions the Commission under section 316 of the Communications Act to modify Intelsat, LLC's<sup>2</sup> satellite licenses for use of the orbital locations and associated radio frequency assignments that constitute the ITSO Parties' Common Heritage. The ITSO Parties' Common Heritage assets are governed by the ITSO treaty Agreement (ITSO Agreement), a "treaty" to which the United States is a party. ITSO's Parties, the 148 member States of the Organization, acquired rights to these Common Heritage assets prior to the

---

<sup>1</sup> *Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, IB Docket No. 05-290, FCC 06-85, at para. 65 (June 19, 2006).

<sup>2</sup> Intelsat, LLC is the U.S. licensee for satellites operated by Intelsat, Ltd. of Bermuda, which uses the ITSO Parties' Common Heritage orbital allocations that are the subject of this petition.

restructuring of the Organization in July 2001, and retained interests in these Common Heritage assets in accordance with the ITSO Agreement. Under section 316, a station license may be modified by the Commission as in the public interest “if in the judgment of the Commission ... the provisions ... of any treaty ratified by the United States will be more fully complied with.”

The license modifications requested by ITSO are intended to assure adherence by Intelsat, or any successor or subsequent satellite operator using the Parties’ Common Heritage assets, to the “Core Principles” established by the ITSO Agreement. These principles include: (i) maintaining global connectivity and global coverage; (ii) serving lifeline connectivity customers; and (iii) providing non-discriminatory access to the Intelsat system. The importance of these license modifications is high-lighted by Intelsat’s debt burden and the risk that this could create for the continuity of the Core Principles and the Parties’ interest in the Common Heritage orbital locations, should a market decline result in Intelsat’s bankruptcy or liquidation. Conversely, ITSO’s proposed license modifications for Intelsat’s use of the Parties’ Common Heritage will not have a significant impact on Intelsat unless and until Intelsat’s financial situation jeopardizes the Parties’ interests in the Common Heritage assets and/or Intelsat’s ability to meet its obligations under the Core Principles.

By filing this Petition, ITSO requests that the Commission, in accordance with the U.S. role as the primary “Notifying Administration” and licensing jurisdiction for the Parties’ Common Heritage assets, condition the relevant licenses by:

1. Ensuring that the Commission’s licenses to Intelsat are linked to the Core Principles;
2. Ensuring that any successor to Intelsat, or other satellite operator that uses the Parties’ Common Heritage assets, is bound by the Core Principles in the ITSO

Agreement through the execution of a public services agreement with ITSO; and

3. Requiring that Intelsat place a lien, letter of credit, third party guarantee or other legal instrument on certain satellites in order to provide bankruptcy protection to ensure the fulfillment of the “Core Principles” of the ITSO treaty Agreement, including global connectivity, global coverage, non-discriminatory access and protection of lifeline connectivity obligation (LCO) contracts. This protection would include the replacement of a sufficient number of satellites for the ongoing achievement of these goals.

Approval of the requested safeguards under section 316 will fulfill the primary purpose of privatization, which was to ensure the *long-term* protection of the Core Principles that secures the provision of international public telecommunications services to all countries of the world. The U.S. extensively uses Intelsat capacity to ensure international connections with many foreign countries, and therefore, the U.S. would be among those countries most critically affected by any interruption of global connectivity and global coverage.

## **II. ITSO AGREEMENT ESTABLISHES A U.S. TREATY OBLIGATION TO ENSURE INTELSAT’S COMPLIANCE WITH “CORE PRINCIPLES”**

On July 18, 2001 the satellite fleet and contractual backlog of ITSO (formerly known as “INTELSAT”) were transferred to Intelsat, Ltd., through its subsidiaries.<sup>3</sup> As part of the privatization process, ITSO was tasked to ensure the fulfillment of the public service Core Principles, and to protect the Parties’ interests in the Common Heritage assets.<sup>4</sup> Also as part of this process, the United States was designated by a decision of the Twenty-Fifth Assembly of Parties (AP-25) in November 2000 as the primary “Notifying

---

<sup>3</sup> The Commission’s *PanAmSat Transfer Order* states, e.g., paragraph 53, that the member States “*privatized INTELSAT by transferring its assets to a commercial corporation, Intelsat, Ltd.*” In fact, ITSO retained certain assets, including ITSO annuity funds, non-novated customer contracts, etc.

<sup>4</sup> See Agreement Relating to the International Telecommunications Satellite Organization, “INTELSAT,” 23 U.S.T. 3813; TIAS No. 7532, (February 12, 1973). Amendments to the Agreement entered into force on November 30, 2004 in accordance with Article XVII, paragraph (e). **The ITSO Agreement is attached to this Petition as Exhibit I.**

Administration” and licensing jurisdiction for the Parties’ Common Heritage orbital locations and associated radio frequency assignments in the C- and Ku-bands.<sup>5</sup>

Selection of the United States as the primary Notifying Administration was based on an international competition among ITSO’s member States to become the licensing jurisdiction for the Parties’ Common Heritage. INTELSAT’s Board of Governors reviewed several “finalists” prior to privatization, including France, Norway, the United Kingdom, and the United States. The Board recommended the United States for the C- and Ku-band registrations, based on the U.S. commitment to support the Core Principles and protect the Common Heritage assets. The Commission emphasized the importance to the Assembly of Parties of the licensing jurisdiction’s assurance of compliance with the core public service principles:

“INTELSAT has decided that certain ‘core principles’ of its current mission must be retained after privatization. ... *The final Assembly decision to privatize INTELSAT will depend on receiving assurances from the prospective licensing jurisdictions that the privatized entity will continue to operate in accordance with these principles.*”<sup>6</sup>

Subsequently, AP-25 ratified the Board of Governors’ recommendation to designate the United States as the primary Notifying Administration and licensing jurisdiction.<sup>7</sup>

Prior to the selection of the United States as the Notifying Administration at AP-25 in November 2000, the Commission in August 2000<sup>8</sup> had issued licenses to Intelsat to *use* the Parties’ Common Heritage orbital locations; however, these licenses do not

---

<sup>5</sup> The Commission has identified these orbital locations in the *PanAmSat Transfer Order*, footnote 166.

<sup>6</sup> *Intelsat, LLC*, 15 FCC Record 15460, para. 25 (emphasis added, footnote omitted).

<sup>7</sup> AP-25-3E, para. 29.

<sup>8</sup> Memorandum Opinion and Authorization, FCC 00-287, released August 8, 2000, *in the matter of the Application of Intelsat LLC for Authority to Operate, and Further Construct, Launch, and Operate C-band and Ku-band Satellites that form a Global Communication System in Geostationary Orbit*.

reflect the obligation of the U.S., as the Notifying Administration under Article XII of the ITSO Agreement. **Therefore, there is a discrepancy that needs to be corrected between the Commission licenses issued in August 2000, and the obligations of the U.S. as the Notifying Administration adopted by AP-25 in November 2000 and incorporated into the ITSO Agreement.**

The general history of INTELSAT's formation and its privatization previously has been summarized by the Commission.<sup>9</sup> The privatization of INTELSAT's operating assets and the reorganization of the INTELSAT IGO that created the ITSO oversight mechanism are the products of a treaty to which the United States is a party. As set out in the preamble to the current ITSO (amended INTELSAT) Agreement:

[The State Parties to this Agreement] *Intending that the Company will honor the Core Principles set forth in Article III of this Agreement and will provide, on a commercial basis, the space segment required for international public telecommunications services of high quality and reliability,*

*Having determined that there is a need for an intergovernmental supervisory organization, to which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles on a continuing basis ... (emphasis added).*

Under the ITSO Agreement, the "Core Principles" of the post-privatization Intelsat are defined in Article III(b) as being to: "(i) maintain global connectivity and global coverage; (ii) serve its lifeline connectivity customers; and (iii) provide non-discriminatory access to the Company's system. Three separate mechanisms exist to ensure post-privatization Intelsat's compliance with the Core Principles:

- (a) the actions of the **Parties**, collectively through the Assembly of Parties, and individually through their sovereign treaty obligations, to ensure Intelsat's compliance with the Core Principles;

---

<sup>9</sup> See, *Intelsat, LLC*, 15 FCC Record 15460, paras. 5-10 (2000); 16 FCC Record 12280, paras. 5-10 (May 29, 2001).



- (b) the actions of the **Notifying Administrations** for the Parties' Common Heritage orbital locations, on behalf of all Parties, to ensure compliance with the Core Principles; and
- (c) a **Public Services Agreement** between ITSO and Intelsat incorporating the Core Principles as contractual Public Service Obligations (PSOs),<sup>10</sup> with respect to which ITSO has oversight responsibilities. Intelsat's continued fulfillment of these PSOs is the basis on which ITSO conditionally transferred the assets (e.g., satellites, \$5.8 billion backlog, etc.).

The Commission's *PanAmSat Transfer Order* addressed the Commission's role with respect to the Public Services Agreement and existing conditions on Intelsat's satellite licenses for Common Heritage orbital locations.<sup>11</sup> This Petition is based on the Commission's invitation to focus on actions that would "promote the provisions of the ITSO Agreement and U.S. fulfillment of obligations under the ITSO Agreement."<sup>12</sup> This Petition, therefore, focuses on the first two enforcement mechanisms (a) and (b) above.

**The Parties' oversight responsibilities.** The provisions of the Agreement set out the Parties' role in ensuring Intelsat's compliance with the Core Principles.

- Article IX establishes the Assembly of Parties, which is composed of all State Parties to the Agreement, as the "principal organ of ITSO."<sup>13</sup> Article IX(c) in turn, directs that the Assembly "shall ... in particular ensure that the Company provides, on commercial basis, international telecommunications services in order to" fulfill the Core Principles.
- Article XI addresses the Rights and Obligations of Parties. Article XI(a) directs that Parties shall "exercise their rights and meet their obligations" under the Agreement "in a manner fully consistent with and in furtherance of the principles stated in the Preamble [and] the Core Principles in Article III."

---

<sup>10</sup> It should be noted that the existing Public Services Agreement was signed prior to the date of privatization on behalf of *both parties by the same individual* in his capacity as the then-Director General of INTELSAT (on behalf of post-privatization ITSO), and as chief executive-designate of post-privatization Intelsat, Ltd. (on behalf of that company).

<sup>11</sup> See, e.g., paragraphs 63, 64.

<sup>12</sup> Paragraph 65.

<sup>13</sup> Article VIII(b) establishes "an executive organ, headed by the Director General, responsible to the Assembly of Parties."

**The Director General** also has oversight responsibilities for the Parties' Common Heritage. Specifically, the Director General is tasked, under Article X(j) of the ITSO Agreement, to consider on behalf of ITSO all issues arising from the Parties' Common Heritage and shall communicate the views of ITSO's Parties to the Notifying Administrations.

**The Notifying Administration's oversight responsibilities.** Article XII of the ITSO Agreement addresses the Parties' Common Heritage and authorizes the Assembly of Parties to designate one or more Parties as the ITU Notifying Administration for the Parties' Common Heritage orbital positions. Article XII imposes several obligations on a Notifying Administration. Consequently, a Party selected as a Notifying Administration takes on certain responsibilities in order to assure not only the fulfillment of the Core Principles,<sup>14</sup> but to work with the Director General on potential activities to expand access to lifeline countries<sup>15</sup> and to consult with the ITU regarding the satellite communications needs of lifeline users.<sup>16</sup> In so doing, a Notifying Administration serves as trustee for the orbital locations for which they have been selected as the Notifying Administration, and becomes directly responsible to ITSO's Parties for ensuring the continued fulfillment of the Core Principles.

The United States recognized its obligations in accepting the nomination as the primary Notifying Administration in 2000 at AP-25 as the result of the competitive selection process. At AP-25, the representative of the Party of the United States stated that:

---

<sup>14</sup> ITSO Agreement, Article XII(e)(iv).

<sup>15</sup> Id. at Article XII(e)(iii).

<sup>16</sup> Id. at Article XII(e)(v).

“... the United States is honored to be selected along with the United Kingdom as the notifying administration for the privatized Intelsat *and the trustee of common heritage of the INTELSAT Parties in terms of locations and frequency assignments. His Party fully appreciates the trust that has been placed with it and it does not take this responsibility lightly.* In accepting this important responsibility, he concluded, we look forward to working together with the ITSO, with Intelsat Ltd. and *to achieve the Assembly’s common vision of a healthy, strong Intelsat that can best fulfill its core principles.*”<sup>17</sup>

At the Twenty-Ninth Assembly of Parties (AP-29) meeting in February 2006, the Assembly of Parties decided to call upon the United States to act in its role as the primary Notifying Administration and trustee of the assigned Common Heritage orbital locations, by requesting the Commission to require appropriate conditions safeguarding Intelsat’s adherence to Core Principles as part of the PanAmSat approval process. The Commission noted the Assembly’s request,<sup>18</sup> but deferred consideration of any such conditions to this section 316 proceeding.<sup>19</sup>

---

<sup>17</sup> AP-25-4, paragraph 415, emphasis added.

<sup>18</sup> The *PanAmSat Transfer Order* stated, at note 175:

The ITSO Assembly of Parties decided: “to request the United States and the United Kingdom, in their capacity as the selected licensing jurisdictions and ‘Notifying Administrations’ for the orbital locations and frequency assignments transferred in accordance with Article XII of the ITSO Agreement (the ‘Common Heritage’), to communicate to the appropriate authorities the Assembly’s desire that:

a) remedies in the nature of those advised by Kirkpatrick & Lockhart Nicholson Graham in Attachment No. 1 to document AP-29-11, are implemented to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding post-PanAmSat acquisition, including adherence to Lifeline connectivity obligation (LCO) contracts currently in effect with LCO-eligible customers; and

b) the conditions on the licenses issued by the United States and the United Kingdom to Intelsat (to use the INTELSAT ‘Common Heritage’ orbital positions) clarify that no entity that is not bound by the Public Services Agreement can be considered a ‘successor’ of Intelsat, LLC.”

<sup>19</sup> *PanAmSat Transfer Order*, at paragraphs 62-66.

### III. COMMISSION IS BOUND BY U.S. RESPONSIBILITIES AS A NOTIFYING ADMINISTRATION.

The Commission is bound by the “trustee” obligations of the United States as the Notifying Administration, both as a matter of international and domestic law, and based on the Commission’s own representations to AP-25 that were determinative of the Assembly’s decision to select the United States as a Notifying Administration in a competitive selection process.<sup>20</sup> First, treaty obligations are obligations of the United States as a State, and the organizational structure of a States’ government are internal matters. Independent administrative authorities, such as the Commission, are components of the States which establish them and draw their authority from those States. Consequently, although they may have independent status within the internal framework of the State in question, independent agencies are bound by all international commitments of the State of which they are a part.

Second, the ORBIT Act itself recognizes the unitary nature of the United States’ interest in the privatization of INTELSAT, since section 644(b) of the Communications Satellite Act of 1962, as amended by the ORBIT Act, is addressed to both the U.S.’ executive branch and the Commission: “The President and the Commission shall take the action [sic] necessary to ensure that the United States *remains* the ITU notifying administration for the privatized INTELSAT’s existing and future orbital slot registrations.” (Emphasis added.) Thus, the United States’ recognition, at AP-25, that

---

<sup>20</sup> In the *PanAmSat Transfer Order*, at paragraph 65, the Commission implied that it would consider ITSO’s section 316 petition only if advised by the State Department that such consideration “would promote the provisions of the ITSO Agreement.” While U.S. government deliberative processes are an internal U.S. matter (but whose outcome should be articulated, see *Order* at note 176), for reasons set out in this section, the Commission is directly bound by the ITSO Agreement and the U.S.’ obligations as Notifying Administration for the Parties’ Common Heritage orbital locations.

United States, as a Notifying Administration, would serve as “trustee” on behalf of the Parties with respect to their Common Heritage orbital locations is—under the ORBIT Act—as binding on the Commission as on any executive branch department.

Lastly, the formal actions of the Commission, itself, were central to the selection of the United States as Notifying Administration. As noted above, the approval of the United States as the primary Notifying Administration at AP-25 in November 2000, after a competitive selection process among ITSO’s member States, was based on the U.S. commitment to support the Core Principles and protect the Common Heritage assets.

#### **IV. INSOLVENCY RISK ASSOCIATED WITH POST-MERGER INTELSAT IS REAL AND NOT “SPECULATIVE”**

In the *PanAmSat Transfer Order*, the Commission rejected ITSO’s warnings that the increase in Intelsat debt associated with the PanAmSat acquisition could place Intelsat’s solvency at significant risk, which could lead to avoidance of Intelsat’s contractual obligations under the ITSO-Intelsat Public Services Agreement or under Intelsat’s Lifeline Connectivity Obligation contracts in eligible markets:

In this case, ITSO has not substantiated for the record now before us that obligations set out in the Public Services Agreement between ITSO and Intelsat factually are at significant risk. The record does not demonstrate that Intelsat, as a result of the merger, is likely to enter bankruptcy or default on its contractual obligations. Although bankruptcy can be a risk in a business venture, ITSO’s concern remains largely speculative based upon the record before us. *PanAmSat Transfer Order*, at paragraph 63.

In reviewing the Commission’s decision, ITSO would like to highlight that, what might be perceived as speculative could turn into a tragic event following recent concrete examples. On Friday, August 26, 2005, it was “speculative” that Hurricane Katrina, then in the eastern Gulf of Mexico, would strike New Orleans. What was not speculative was that there was a significant risk that it would do so, and if it did strike New Orleans, the

results could be catastrophic. Similarly, it is presently unknowable whether Intelsat will, in fact, default, in whole or part, on its financial or contractual obligations, or in light of its credit agreements, fail to have sufficient access to capital to replace satellites currently occupying Common Heritage orbital positions as they reach the end of their service lives. What is not contestable is that there is a significant—and growing—risk of such adverse outcomes, and that such financial difficulties could have a catastrophic effect on Intelsat’s ability to fulfill the Core Principles and ITSO’s ability to protect the Parties’ Common Heritage assets. What also is not speculative is that it is better to prepare for potentially catastrophic situations prior to their arrival, as opposed to improvising solutions once they are at hand. This is particularly critical in the event of bankruptcy, where protections need to be in place at least 90 days prior to any bankruptcy filing to be effective.

In its Reply Comments in the PanAmSat proceeding, ITSO observed that: “Moody’s Investors Service *already* rates several unsecured Intelsat, Ltd. obligations as Caa1. ... According to Moody’s, ‘Obligations rated Caa are judged to be of poor standing and are subject to very high credit risk;’ the PanAmSat acquisition would increase Intelsat’s debt and thus the level of risk to unsecured/subordinated obligations.”<sup>21</sup> ITSO thus suggested the Commission should consider Intelsat’s Public Service Obligations to be “rated” at no higher level than existing, unsecured debt, *i.e.*, no higher than Caa, a level of risk that would be exacerbated by the debt incurred in conjunction with the PanAmSat acquisition.

---

<sup>21</sup> ITSO *Reply Comments*, IB Docket No. 05-290, at 7 (December 6, 2005, footnotes omitted).

Events surrounding the financing of the PanAmSat acquisition have underscored ITSO's concerns. For example, on June 9, 2006, Moody's did, in fact, downgrade senior unsecured Intelsat, Ltd. debt from Caa1 to Caa2 (while assigning a higher, but still speculative, B1 rating to secured bank credit facilities).<sup>22</sup> Also on June 9, 2006, Standard & Poor's released a rating of B for certain debt associated with the PanAmSat transaction. According to S&P, "An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meet its financial commitment on the obligation." Consistent with the rating, S&P noted that the benefit of Intelsat's cash flow from long-term satellite capacity leases was counterbalanced by other risk factors:

The ratings on the combined Intelsat and PanAmSat primarily reflect *high financial risk* from acquisition-related debt and a demonstrated shareholder-oriented financial policy. Although the company has indicated it will refrain from shareholder distributions for one year following the transaction, *the company's historical financial policy suggests that it may make substantial shareholder distributions over the medium term*. Other concerns include mature industry growth prospects, declining demand for point-to-point satellite applications, and modest risk of satellite failure.<sup>23</sup>

Events subsequent to the two agencies' June 9, 2006 ratings have further heightened ITSO's concerns. For example, on June 19, 2006 it was reported that Intelsat experienced a \$600 million shortfall in expected bond financing for the PanAmSat merger, and a significant portion of the bonds sold were at an interest rate of 11.25 percent, "a quarter of a percentage point more than the top end of the range bankers

---

<sup>22</sup> See [www.moody.com](http://www.moody.com).

<sup>23</sup> **Standard & Poor's**, "Intelsat BB- Corporate Rating Affirmed" (Press Release, June 9, 2006, emphasis added).

originally estimated.”<sup>24</sup> Indeed, the capital markets have not responded favorably to the Intelsat debt offerings associated with the PanAmSat acquisition: according to press reports, these Intelsat offerings experienced “disappointing performances in the secondary market.”<sup>25</sup> The \$600 million gap is to be made up by bank bridge loans that will have to be refinanced in the near term.

Of course, the increased cash flow needed to support debt service at higher-than-expected interest rates reduces the post-interest cash flow available to support Intelsat’s operations. The importance of these license modifications is high-lighted by Intelsat’s debt burden of \$11.4 billion, which is eight times (8x) its earnings before interest, taxes, depreciation and amortization (EBITDA),<sup>26</sup> and the risk (as confirmed by ITSO’s legal advisor<sup>27</sup>) that this could create for the continuity of the Core Principles and the Parties’ interest in the Common Heritage orbital locations, should a market decline result in Intelsat’s bankruptcy or liquidation. Intelsat will pay approximately \$1 billion annually to service its debt obligations, which represents 53% of the 2005 combined Intelsat / PanAmSat revenues.<sup>28</sup> Should the resulting “very high financial risk” (Moody’s Caa definition) associated with Intelsat’s high debt level and expected distributions to shareholders in fact “breach the levees” that are critical to ensuring Intelsat’s liquidity, the result could be catastrophic for the Core Principles and the Parties’ Common Heritage

---

<sup>24</sup> **Bloomberg.com**, “Intelsat Reduces Bond Sale by \$600 Million to \$2.9 billion (Update 1)” (June 19, 2006).

<sup>25</sup> See, “In Junk Deals, Buyers Calling the Shots,” *Wall Street Journal*, at C5 (June 28, 2006).

<sup>26</sup> See, **Satellite Finance**, 6 July 2006.

<sup>27</sup> See, “*Legal Opinion of Kirkpatrick & Lockhart Nicholson Graham LLP on the Risk of U.S. Bankruptcy Laws to the Continuity of Public Service Obligations*,” submitted in IB Docket 05-290 by the U.S. Department of State (March 7, 2006).

<sup>28</sup> Intelsat, Ltd. 10-K Report (2005 Annual Report), U.S. SEC (April 17, 2006).



assets, and could include: (a) elimination or reduction of the financial and/or technical capacity necessary to support global coverage/global connectivity obligations;<sup>29</sup> (b) potential avoidance of Public Service Obligations, including Lifeline Connectivity commitments, in bankruptcy/insolvency proceedings; (c) sale of existing satellites using the Parties' Common Heritage orbital locations to entities not subject to the Core Principles as a means of raising cash for Intelsat or otherwise satisfying lender requirements; and/or (d) commercial transactions that involve the Parties' Common Heritage assets.

Moreover, recent developments in the broader market for "junk" debt used by buyout firms heighten the risk of a rapid, adverse outcome. "At some point, the current conditions will turn ugly as higher interest rates and slower growth start to pinch debt-laden companies. The wizardry that has gone into creating these new structures means there will be little warning when the turn comes. ... All this means that when defaults come, they will come suddenly. That is because there are so many layers of debt, compared with previous cycles."<sup>30</sup> Also, according to the head of Standard & Poor's Leveraged Commentary and Data Unit, "private-equity firms have taken a lot of cash out of their portfolio companies while putting more debt on the balance sheet, leaving less for creditors when these companies finally hit the wall."<sup>31</sup>

---

<sup>29</sup> For example, 16 of Intelsat's pre-PanAmSat and Loral acquisition fleet of 25 satellites will reach their End of Orbital Design Life by 2010. Intelsat, Ltd. 20-F Report, U.S. SEC, at 35 (March 15, 2005).

<sup>30</sup> "High-Risk Debt Still Has Allure for Buyout Deals," *Wall Street Journal*, at C1 (June 13, 2006).

<sup>31</sup> Quoting Steve Miller, head of Standard & Poor's Leveraged Commentary and Data Unit, in *Wall Street Journal*, at C1 (June 13, 2006). Intelsat's private equity investors reported to the U.S. SEC that they have withdrawn two dividends in 2005, since acquiring Intelsat in January 2005, of \$504.7 million, plus an additional \$71.5 million in

Fortunately, unlike remedies associated with the potential landfall of a hurricane, the modifications that ITSO requests to Intelsat licenses neither generate a requirement for current expenditures nor cause disruption.

**V. COMMISSION SHOULD USE ITS SECTION 316 AUTHORITY TO ADOPT APPROPRIATE LICENSE MODIFICATIONS AS A CONDITION OF INTELSAT'S USE OF PARTIES' COMMON HERITAGE ORBITAL LOCATIONS.**

In its *PanAmSat Transfer Order*, the Commission invited ITSO to petition the Commission under section 316, a process in which it “could consider ... a request by ITSO to impose appropriate conditions on Intelsat satellites operating with former INTELSAT frequency assignments and orbital slots...”<sup>32</sup> As set out in Section II above, the United States has an obligation to the other Parties, in its capacity as the selected primary Notifying Administration, to ensure that Intelsat's use of the Parties' Common Heritage orbital locations remains in accord with the Core Principles. This obligation is separate from the contractual arrangement, under the Public Services Agreement, between ITSO and Intelsat. As set out in Section III above, this obligation falls directly on the Commission both under international law, and under section 644(b) of the ORBIT Act. Ensuring the fulfillment of these ITSO Agreement responsibilities falls squarely within the purposes of section 316.

---

2005 in management fees (including a \$21.5 million annual “monitoring fee” and an additional \$50 million “transaction and advisory fee”). Intelsat, Ltd. 10-K Report (2005 Annual Report), U.S. SEC, at 109-110 and F-34, (April 17, 2006).

<sup>32</sup> *PanAmSat Transfer Order*, paragraph 65.

ITSO believes that three<sup>33</sup> modifications to Intelsat, LLC's<sup>34</sup> fixed satellite service (FSS) space station licenses using the ITSO Parties' Common Heritage orbital locations,<sup>35</sup> would ensure that the obligations imposed by the ITSO Agreement on a Notifying Administration are more fully complied with. As the Commission noted in its *PanAmSat Transfer Order*,<sup>36</sup> the Twenty-Ninth meeting of the Assembly of Parties (AP-29)<sup>37</sup> requested that the Commission take steps in approving the PanAmSat acquisition to protect Intelsat's ability to fulfill the Core Principles in case of its bankruptcy or default. Since AP-29, ITSO has sought to refine the Assembly's recommendations, taking into consideration the legal advice of its bankruptcy counsel.<sup>38</sup> Based on these analyses, ITSO requests that the Commission should:

1. Ensure that the Commission's licenses to Intelsat are linked to the Core Principles;
2. Ensure that any successor to Intelsat, or other satellite operator that uses the Parties' Common Heritage assets, is bound by the Core Principles in the ITSO Agreement through the execution of a public services agreement with ITSO; and
3. Require that Intelsat place a lien, letter of credit, third party guarantee or other legal instrument on certain satellites in order to provide bankruptcy protection to ensure the fulfillment of the "Core Principles" of the ITSO treaty Agreement, including global connectivity, global coverage, non-discriminatory access and protection of lifeline connectivity obligation (LCO)

---

<sup>33</sup> In the PanAmSat acquisition proceeding, ITSO also had requested that the Commission condition approval of that transaction on Intelsat reinstatement of its Bye-Law number 2 relating to ITSO and to Intelsat's Public Service Obligations. Intelsat subsequently committed to making this change during Intelsat's presentation to the ITSO member States during AP-29.

<sup>34</sup> Intelsat, LLC is the U.S. licensee for satellites operated by Intelsat, Ltd. of Bermuda, using orbital allocations that are the subject of this petition.

<sup>35</sup> See *PanAmSat Transfer Order*, footnote 166.

<sup>36</sup> At footnote 175.

<sup>37</sup> AP-29 was held on January 30 – February 2, 2006.

<sup>38</sup> The Deputy United States Coordinator, International Communications and Information Policy, conveyed to the Commission the analysis and recommendations of ITSO's bankruptcy counsel. See *PanAmSat Transfer Order*, footnote 174.

contracts. This protection would include the replacement of a sufficient number of satellites for the ongoing achievement of these goals.

With respect to the **first requested license modification**, there is a discrepancy that needs to be corrected between the Commission licenses issued in August 2000, and the obligations of the U.S. as the Notifying Administration and the Core Principles, which were adopted by AP-25 in November 2000, which were the primary basis for privatization in July 2001, and which were incorporated into the ITSO Agreement that was adopted by AP-25 in November 2000 and formally ratified in September 2004.

With respect to the **second requested license modification**, the nature of an Intelsat “successor” was not defined in the privatization agreements, nor was the relationship between an Intelsat successor and the Public Services Agreement specified.<sup>39</sup> Given the “very high financial risk” associated with Intelsat’s operation, it is incumbent on the Commission to clarify the definition of an Intelsat successor *now*, and not wait until an Intelsat bankruptcy or default. The Commission also needs to ensure that any satellite operator using any of the Parties’ Common Heritage assets, is bound by the Core Principles in the ITSO Agreement through the execution of a public services agreement

---

<sup>39</sup> In *PanAmSat Transfer Order* paragraph 60, the Commission also stated that, “In 2000, the Commission neither was requested to condition nor did it condition Intelsat’s license on fulfillment of Intelsat’s commitments under the Public Services Agreement subsequently entered into by ITSO and Intelsat.” If helpful to the Commission’s decisional process with respect to the current Petition, **ITSO notes that the license transfer application was executed on behalf of ITSO by the existing INTELSAT Management, which also was designated to become the management of Intelsat, Ltd. upon privatization.** As noted in footnote 12, the prospective CEO of Intelsat, Ltd. management simultaneously signed certain privatization documents (e.g., the Public Services Agreement) on behalf of ITSO *and* on behalf of Intelsat, Ltd. The current ITSO structure and personnel did not begin operation until the date of privatization, July 19, 2001. Further, the removal of the ORBIT Act’s IPO requirement by Public Law 108-371 (October 25, 2004), permitting the purchase of Intelsat by a single investment group, was not in the Parties’ contemplation in 2000.

with ITSO.<sup>40</sup> This is intended to cover the wide spectrum of transactions that could be employed to maximize equity returns or provide liquidity for Intelsat shareholders and/or creditors at a time of financial difficulty. It is also intended to reflect the possible desire of Intelsat and other parties to rationalize the Intelsat satellite fleet as future business conditions may warrant.<sup>41</sup>

The **third requested modification** addresses the possibility that prospective Intelsat financial difficulties, whether or not resulting in bankruptcy or default, could leave Intelsat without sufficient resources to enable it to procure and operate replacement satellites necessary to meet the Core Principles of “global coverage” and “global connectivity.” ITSO estimates that at least five strategically-placed satellites are necessary to maintain a *minimum* level of global coverage and global connectivity to preserve the Core Principles. These five satellites would amount to less than 10 percent of Intelsat’s 53-satellite fleet, resulting from the PanAmSat acquisition.

---

<sup>40</sup> As the Commission noted in its *PanAmSat Transfer Order*: “[W]ith respect to the orbital slots that were to be transferred to the U.S. national registry, the August, 2000 *Intelsat Licensing Order* provided that, in the event any of these orbital slots no longer was assigned for use by Intelsat or its successors, such orbital location “shall be cancelled in accordance with procedures of the International Telecommunications Union.” *PanAmSat Transfer Order*, paragraph 60. However, the term “use” is not defined, and Intelsat’s “use” could potentially include transactions that may impact a portion of a Common Heritage frequency assignment, including modification, suppression or cancellation of the Parties’ Common Heritage frequency assignments resulting from intersystem coordinations, decisions of the Notifying Administrations, or agreements between Intelsat and third parties. *See, for example, “New Skies agreed not to bring into use a satellite at its 120.8 degrees west orbital position in order to ensure the long term, interference-free operation of Intelsat’s IA-13 satellite, in exchange for a one-time cash payment from INTELSAT to New Skies of US\$32 million.” New Skies Satellites N.V. First Quarter 2004 Financial Results, 5 May 2004, (emphasis added).*

<sup>41</sup> *See, for example, the statement by SES Global’s CFO, “SES was interested in looking at any of the Intelsat or PanAmSat orbital assets that might come up for sale once the deal closes.” “2005: What a Spectacular Year for Europe!,” by Chris Forrester, SATMAGAZINE.com (December 2005).*

ITSO requests that the Commission modify each Intelsat satellite license using the Parties' Common Heritage orbital positions to require that Intelsat place liens on a sufficient number of those satellites to ensure, in a manner and number satisfactory to ITSO, that ITSO can obtain control of, and finance replacements for, five "global coverage and connectivity" satellites, if conditions warrant such actions. ITSO will work with the Commission during the course of this section 316 proceeding to elaborate the detailed elements of this proposal.

The ITSO extraordinary Assembly of Parties meeting, in Paris on July 19-21, 2006, will consider issues arising from the need to protect the Core Principles following Intelsat's acquisition of PanAmSat, as well as matters relating to Intelsat's compliance with its Public Service Obligations. ITSO will ensure that the Commission is advised of the results of this Assembly.

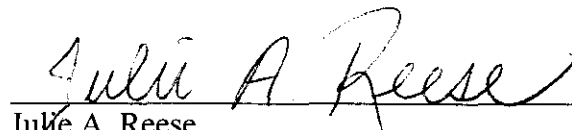
## **VI. CONCLUSION**

For the reasons set out above, the Commission should find the modifications to Intelsat's satellite licenses using the ITSO Parties' Common Heritage orbital locations, as proposed in this Petition, to be in the public interest under section 316 of the Communications Act, because these modifications would enforce U.S. treaty obligations, and in particular will: (a) ensure the maintenance of the ITSO Agreement's Core Principles, including global coverage and global connectivity, and providing international public telecommunications services to lifeline countries; and (b) be consistent with the trustee role of the United States as the selected Notifying Administration for the Parties' Common Heritage, as stipulated in the ITSO Agreement.

Respectfully submitted,

The International Telecommunications Satellite Organization

By:

A handwritten signature in cursive script that reads "Julie A. Reese". The signature is written in dark ink and is positioned above a horizontal line.

Julie A. Reese

Deputy Director General and General Counsel

3400 International Drive, NW

Washington, DC 20008-3006

202 243-5096

jreese@itso.int

July 10, 2006

## EXHIBIT I

### AGREEMENT RELATING TO THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION

#### PREAMBLE

The States Parties to this Agreement,

Considering the principle set forth in Resolution 1721 (XVI) of the General Assembly of the United Nations that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis,

Considering the relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, and in particular Article I, which states that outer space shall be used for the benefit and in the interests of all countries,

Recognizing that the International Telecommunications Satellite Organization has, in accordance with its original purpose, established a global satellite system for providing telecommunications services to all areas of the world, which has contributed to world peace and understanding,

Taking into account that the 24<sup>th</sup> Assembly of Parties of the International Telecommunications Satellite Organization decided to restructure and privatize by establishing a private company supervised by an intergovernmental organization,

Acknowledging that increased competition in the provision of telecommunications services has made it necessary for the International Telecommunications Satellite Organization to transfer its space system to the Company defined in Article I(d) of this Agreement in order that the space system continues to be operated in a commercially viable manner,

Intending that the Company will honor the Core Principles set forth in Article III of this Agreement and will provide, on a commercial basis, the space segment required for international public telecommunications services of high quality and reliability,

Having determined that there is a need for an intergovernmental supervisory organization, to which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles on a continuing basis,

Agree as follows:

#### Definitions

#### ARTICLE I

For the purposes of this Agreement:

(a) "Agreement" means the present agreement, including its Annex, and any amendments